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10/797,832	03/09/2004	Christopher Goode	SEDN/121CON	5683

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EXAMINER
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PENG, FRED H

ART UNIT	PAPER NUMBER
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2623

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/797,832	<b>Applicant(s)</b> GOODE, CHRISTOPHER	
	<b>Examiner</b> FRED PENG	<b>Art Unit</b> 2623	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☒ Claim(s) 2 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 05/13/2008 have been considered but are moot in view of the new ground(s) of rejection.

Applicant argues on page 7 of Remarks that as in Claim 1, Rudapatna only discloses the first subset of video broadcast representing a first subset of video broadcast channels having a first subscriber viewership level greater than a threshold level but does not directly or indirectly teach "a second subset of video broadcast channels" representing channels with viewership level less than a threshold level.

The Examiner respectfully disagrees with applicant's arguments. Rudapatna does disclose an interactive broadcast video (IBV) service in addition to Interactive Video On-Demand (IVOD) service (FIG.7; Col 6 lines 47-49). Rudapatna further discloses the IBV service is comprised of scheduled video content provided on a broadband broadcast downlink basis potentially to all users (Col 8 lines 59-62; the first subset of video broadcast with viewership level greater than a threshold level as characterized as static broadcast) and also is provided to support services such as wireless CATV, Enhanced Pay-Per-View (Col 8 lines 65-66) which can be categorized as the second subset of video broadcast with less viewership level than the first subset of video broadcast with channel dynamic assignment.

### ***Claim Objections***

2. Claim 2 is objected to because of the following informalities: Claim sentence is not ended with a proper period. Appropriate correction is required.

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct

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from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claim 1 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,718,552. Although the conflicting claims are not identical, they are not patentably distinct from each other because Claim 1 is anticipated by Claim 1 of US Patent 6,718,552.

5. Claim 2 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,718,552 in view of Eldering et al (US 7,150,030).

As of Claim 2, the claim limitations of collecting information from each of the corresponding subscriber stations regarding the frequency of channel usage and favorite channel selections is missing in U.S. Patent No. 6,718,552.

In an analogous art, Eldering discloses characterizing subscribers watching video or multimedia programming based on monitoring the detailed selection choices including the program selection to determine subscriber preference (Col 1 line 66 – Col 2 lines 6; FIG.6; Col 8 line 64 – Col 9 line 2).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to include collecting information from each of the corresponding subscriber stations regarding the frequency of channel usage and favorite channel selections so more personal or customized service or programs can be provided.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-5, 7 and 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Rudrapatna et al (US 5,592,470).

Regarding Claim 1, Rudrapatna discloses a method for increasing channel utilization in a video broadcast system (FIG.2), comprising:

receiving, at a head-end, a request for a video program from one of a plurality of subscriber stations (Col 1 lines 40-42, 56-60; Col 4 lines 31-44);

determining, at said head-end, whether said requested video program is associated with one of a plurality of subsets of video channels, wherein said plurality of subsets of video channels comprises a first subset of video channels representing a first subset of video broadcast channels having a first subscriber viewership level greater than a threshold level (FIG.3, item 304; Col 4 lines 53-57; Col 5 lines 1-16; known customer demand is a criteria for a threshold level; Static Channel Assignment is a first subset of channels), a second subset of video channels representing a second subset of video broadcast channels having a second subscriber viewership level less than said threshold level (Col 5 lines 16-18; if criteria is not met; then stays in another service class for Dynamic Channel Allocation, a second subset of channels), and a third subset of video channels representing on-demand channels having a third subscriber viewership associated with video-on-demand (FIG.2, 214; Col 3 lines 40-42; FIG.3 item 305; Col 4 lines 53-57);

causing substantially continuous transmission of said first subset of video broadcast channels from said head-end toward said plurality of subscriber stations (Col 8 lines 59-62; Static Channel Assignment is substantially continuous transmission);

causing transmission of said second subset of video broadcast channels from said head-end to said plurality of subscriber stations based upon availability of channels in said second subset of channels and assigning video programming corresponding toward said request to an available one of said second subset of channels (FIG.5, items 501-505; Col 5 lines 29-47; assigning channels based on bandwidth availability; Col 8 lines 65-66; enhanced pay-per-view is the second subset of video broadcast channels); and

causing transmission of said third subset of video channels from said head-end toward said plurality of subscriber stations upon assigning video programming corresponding to said request to an available one of said third subset of channels (Col 9 lines 3-6; Video on-demand is the third subset of video channels service and is also based on channel availability).

Regarding Claims 2 and 3, Rudrapatna further discloses collecting information from each of the corresponding subscriber stations regarding the frequency of channel usage and favorite channel selections and sending said collected information from said corresponding subscriber stations to a broadcast interconnect manager for managing broadcast channels and the narrowcast channels within a broadcast spectrum (FIG.6, items 601, 603-607; Col 6 lines 3-10; Col 3 lines 49-50).

Regarding Claim 4, Rudrapatna further discloses updating said plurality of subscriber stations with broadcast channel availability in a form of a channel map (FIG.3; Col 4 lines 26-31; Col 8 lines 15-20).

Regarding Claim 5, Rudrapatna further discloses said updating said plurality of subscriber stations with broadcast channel availability comprises: associating program identity,

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channel frequency, program availability and analog/digital format for each broadcast channel (FIG.6; Col 8 lines 15-42, different encoding rates indicating digital format; Col 3 lines 40-42, menu driven user interface indicating program availability).

Regarding Claim 7, Rudrapatna further discloses sending a channel map modifier request to said subscriber station; adding a new channel to said channel map at said subscriber station in an instance said channel map modifier request comprises an add channel request (FIG.6; when a new service is added to a channel 607, the users are updated 615).

Regarding Claim 9, Rudrapatna further discloses transmitting said requested video program from said head-end to subscriber equipment associated with said request, via a transmission network characterized by a broadcast spectrum over which programs are transmitted to said plurality of subscriber stations (FIG.1; FIG.3; Col 2 lines 58 – Col 3 line 23).

Regarding Claim 10, Rudrapatna further discloses said broadcast spectrum comprises a semi-static broadcast portion of  $n$  channels, an on-demand broadcast portion of  $m$  channels, and a narrow-cast portion of  $p$  channels, where  $m$ ,  $n$ , and  $p$  are integers greater than one, said method further comprising allocating a plurality of channel slots for each of said portions of channels (FIG.3, items 303, 304, 305).

Regarding Claim 11, Rudrapatna further discloses said first subset of broadcast channels comprises high viewership of channels associated with said first subset, said second subset of broadcast channels comprises lower viewership of channels associated With said second subset, said method further comprising:

dynamically changing, at said head-end, broadcast channel association with said first and second subsets of broadcast channels in response to changes in subscriber viewership (Col 5 lines 2-67).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rudrapatna et al (US 5,592,470) in view of Rao (US 5,940,738).

Regarding Claim 6, Rudrapatna discloses determining whether said requested channel is in said channel map; if so, tuning to said requested channel at each subscriber station (FIG.6, items 607, 615; Col 8 lines 13-20; a mapping table indicates available channels for user to select).

Rudrapatna is silent about if not in said channel map, adding said requested channel to said channel map in an instance where said requested channel is available from said head-end and tuning to said channel; and providing indicia that said requested channel is unavailable for viewing in an instance where said requested channel is unavailable.

In an analogous art, Rao discloses adding said requested channel to said channel map in an instance where said requested channel is available from said head-end and tuning to said channel (Col 19 lines 22-30, 52-60); and providing indicia that said requested channel is unavailable for viewing in an instance where said requested channel is unavailable (Col 21 lines 55-67).



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It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify Rudrapatna's system to include adding a new requested channel if available and indicating unavailable if it is not available, as taught by Rao to add the benefits of channel bandwidth usage efficiency to the system.

10. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rudrapatna et al (US 5,592,470) in view of Gordon et al (US 5,920,700).

Regarding Claim 8, Rudrapatna discloses determining channel use of a channel listed in said channel map modifier request in an instance said channel map modifier request comprises a delete channel request to delete said channel associated with said delete channel request (FIG.6, items 607, 615; when a channel is replaced by a new service Sj the old service Si is deleted from that channel).

Rudrapatna is silent about sending a channel in use response to said head-end in an instance a channel associated with said delete channel request is in use.

In an analogous art, Gordon discloses indication of an asset in use response to Operations in an instance an asset associated with said delete asset request is in use (Col 6 lines 30-39).

It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to modify Rudrapatna's system to include a channel in use response to said head-end in an instance a channel associated with said delete channel request is in use, as taught by Gordon to provide a more user friendly interface system.

### ***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to FRED PENG whose telephone number is (571)270-1147. The examiner can normally be reached on Monday-Friday 09:00-18:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivek Srivastava can be reached on (571) 272-7304. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Annan Q Shang/  
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